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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(San Joaquin)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
SIEM YONG,  
  
Defendant and Appellant.

C058806  
  
(Super. Ct. No.  
SF106410A)

Following a jury trial, defendant Siem Yong was convicted of possession of methamphetamine for sale and possession of a firearm during the commission of that offense. In bifurcated proceedings, the court found true the allegation that defendant had suffered a serious prior juvenile adjudication. On appeal, defendant contends his prior juvenile adjudication could not be used as a "strike" because he did not have the right to a jury trial in the juvenile proceedings and that the court abused its discretion in refusing to strike his prior juvenile adjudication under Penal Code section 1385 (undesigned statutory references that follow are to the Penal Code). We affirm the judgment.

## FACTS AND PROCEEDINGS

The facts of defendant's offenses are not at issue and may be briefly stated.

On the morning of October 26, 2007, narcotics officers and SWAT team members from the Stockton Police Department served a warrant at house located in Stockton. While they were preparing to serve the warrant, the officers saw defendant and his girlfriend leave the house. Defendant was pulled over at a nearby gas station.

Upon searching the house, officers found 28.5 grams of crystal methamphetamine, a semi-automatic handgun, ammunition, a digital scale, marijuana, a soda can containing marijuana and methamphetamine, pay/owe sheets and \$1,800 in cash. There was also a variety of paperwork and identification linking defendant to the specific areas of the home where these items were found. When interviewed by the police, defendant admitted the methamphetamine and the handgun were his. He also admitted he had been selling drugs "for awhile."

Defendant was charged with possession of methamphetamine for sale. It was also alleged defendant possessed a firearm while committing the drug offense. It was further alleged defendant had suffered a prior serious juvenile adjudication, specifically an assault with a deadly weapon on a police officer.

Defendant was convicted as charged. In bifurcated proceedings the court found the strike enhancement true.

Defendant moved to strike the prior adjudication, pursuant to section 1385 and *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Defendant also argued the adjudication could not be used as a strike because he had no right to a jury trial in that proceeding. The parties also argued the matter orally to the court.

The court denied defendant's motion to strike the prior adjudication. The court noted the prior adjudication was an assault with a deadly weapon against a peace officer, that although it was approximately nine and one-half years prior to the instant case, it was not "particularly old" and was certainly serious. The court found there was no basis upon which to treat the offense as outside the three strikes law. Defendant was sentenced to an aggregate term of eight years in prison.

## DISCUSSION

### I

#### *Strike Prior*

Relying on *Apprendi v. New Jersey* (2000) 530 U.S. 466, "and related federal cases," defendant contends his "juvenile adjudication cannot be used as a 'strike'" because he did not have the "right to a jury trial" in those proceedings. After defendant filed his brief, the California Supreme Court decided *People v. Nguyen* (2009) 46 Cal.4th 1007. In *Nguyen*, the court held "the absence of a constitutional or statutory right to jury trial under the juvenile law does not, under *Apprendi*, preclude

the use of a prior juvenile adjudication of criminal misconduct to enhance the maximum sentence for a subsequent adult felony offense by the same person.” (*Id.* at p. 1028.) This decision is controlling and disposes of defendant’s contention. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

## II

### *Section 1385*

Defendant next contends the case must be remanded as the trial court abused its discretion in refusing to strike his prior juvenile adjudication under section 1385. Specifically, defendant argues the assault occurred 10 years earlier, when he was only 16 years old, and his only other brush with the law was a misdemeanor of providing false information to a police officer. He also notes he was gainfully employed prior to committing this crime and the crime itself may have been motivated by his drug addiction. These facts he claims “compel the striking of the prior adjudication.” We are not persuaded.

The trial court has the power to dismiss a strike conviction (*Romero, supra*, 13 Cal.4th at pp. 529-530), and an appellate court will not disturb the trial court’s ruling denying defendant’s request to dismiss his strike conviction absent an affirmative showing of an abuse of discretion. (*People v. Gillispie* (1997) 60 Cal.App.4th 429, 434-435.) Under this standard, the inquiry is whether the ruling in question “‘falls outside the bounds of reason’ under the applicable law and the relevant facts.” (*People v. Williams* (1998) 17 Cal.4th 148, 162.) Only in “an extraordinary case--where the relevant

factors described in *Williams, supra*, 17 Cal.4th 148, manifestly support the striking of a prior conviction and no reasonable minds could differ" would the failure to strike be an abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 378.) Defendant has not shown an abuse of discretion.

Defendant's juvenile record indicates he admitted the assault with a deadly weapon, specifically a semi-automatic gun and that he personally used that gun to assault a police officer. Defendant was committed to the California Youth Authority (CYA) in 1998, paroled in 2001, and sustained a misdemeanor conviction in 2004. CYA parole was revoked and defendant was recommitted to CYA. He was again paroled from CYA in 2005 and discharged from parole in November 2006. Within a year of that discharge, defendant was arrested on the current offense. In both felony offenses, defendant was armed with a semi-automatic handgun. When he committed the current offense, he had been released on his own recognizance, apparently for two separate auto theft cases. There is nothing about defendant or his record which removes him from the spirit of the three strikes law. The trial court's denial of defendant's motion to strike was within the sound exercise of discretion.

## DISPOSITION

The judgment is affirmed.

\_\_\_\_\_ HULL \_\_\_\_\_, Acting P. J.

We concur:

\_\_\_\_\_ ROBIE \_\_\_\_\_, J.

\_\_\_\_\_ BUTZ \_\_\_\_\_, J.